

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3

4 UNITED STATES OF AMERICA,) CRIMINAL NO. 19-00099-DKW

5 Plaintiff,) Honolulu, Hawaii

6) March 9, 2022

7) CHANGE OF PLEA HEARING

8)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DERRICK K. WATSON,
CHIEF UNITED STATES DISTRICT COURT JUDGE

12 APPEARANCES:

14 For the Plaintiff: MARK INCIONG, ESQ.
Office of the United States Attorney
15 PJKK Federal Building
300 Ala Moana Boulevard, Suite 6100
16 Honolulu, Hawaii 96850

17 For the Defendant: MARC JEFFREY VICTOR, ESQ.
The Attorneys for Freedom Law Firm
18 1003 Bishop Street, Suite 1260
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United States District Court
22 300 Ala Moana Boulevard
Honolulu, Hawaii 96850

25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 March 9, 2022 1:02 p.m.

01:02PM 2 THE CLERK: Criminal Number 19-00099-DKW-KJM, United

01:02PM 3 States of America versus Defendant (03) Kaulana Freitas.

01:02PM 4 This case has been called for a change of plea

01:03PM 5 hearing.

01:03PM 6 Counsel, please make your appearances for the record.

01:03PM 7 MR. INCIONG: Good afternoon, Your Honor. Mark

01:03PM 8 Inciong for the United States.

01:03PM 9 THE COURT: Mr. Inciong, good afternoon.

01:03PM 10 MR. VICTOR: Good afternoon and happy Wednesday,

01:03PM 11 Judge. Marc Victor on behalf of Mr. Freitas who is present in

01:03PM 12 court, out of custody.

01:03PM 13 THE COURT: All right. Mr. Freitas and Mr. Victor,

01:03PM 14 I'm not used to seeing you live and in the flesh.

01:03PM 15 MR. VICTOR: Judge, I'm looking forward to the day I

01:03PM 16 can come in without at mask.

01:03PM 17 THE COURT: Likewise. Good afternoon to both of you

01:03PM 18 as well.

01:03PM 19 We are here this afternoon because the defendant,

01:03PM 20 Mr. Freitas, as I understand it wishes to plead guilty to both

01:03PM 21 Count 1 and 13 of the July 2021 second superseding indictment,

01:03PM 22 that's pursuant to a plea agreement with the United States.

01:03PM 23 Mr. Freitas, before accepting your plea, there are a

01:03PM 24 few questions that I need to ask you this afternoon; those

01:03PM 25 questions are designed to ensure that your decisions are both

01:04PM 1 knowing and voluntary. If at any time I ask you any question
01:04PM 2 at all during the course of this afternoon's proceedings that's
01:04PM 3 unclear or ambiguous, you can rest assured, first of all, I do
01:04PM 4 not intend to do that; but second of all, if I do, and you feel
01:04PM 5 that anything I ask you is unclear, I will do my very best to
01:04PM 6 ask a better question, but it's incumbent on you in that
01:04PM 7 instance to let me know. Okay?

01:04PM 8 THE DEFENDANT: Okay.

01:04PM 9 THE COURT: So if you need clarification, I'll do my
01:04PM 10 best to provide or give you an opportunity to speak with
01:04PM 11 Mr. Victor to do the same. Okay?

01:04PM 12 THE DEFENDANT: Thank you.

01:04PM 13 THE COURT: All right. If you would please swear the
01:04PM 14 defendant in.

01:04PM 15 THE CLERK: Please raise your right hand.

01:04PM 16 (The defendant was sworn to answer truthfully.)

01:04PM 17 THE COURT: Please understand, sir, that you have now
01:04PM 18 taken an oath to answer my questions this afternoon truthfully,
01:04PM 19 and if you do anything other than that, you could be subjecting
01:04PM 20 yourself to additional charges. Do you understand that?

01:05PM 21 THE DEFENDANT: I understand.

01:05PM 22 THE COURT: Please state your name.

01:05PM 23 THE DEFENDANT: Kaulana Freitas.

01:05PM 24 THE COURT: How old are you?

01:05PM 25 THE DEFENDANT: 33.

01:05PM 1 THE COURT: What's the highest level of education that
01:05PM 2 you have achieved?
01:05PM 3 THE DEFENDANT: Eleventh grade.
01:05PM 4 THE COURT: Your most recent employer is whom?
01:05PM 5 THE DEFENDANT: Kama'aina Termite and Pest Control.
01:05PM 6 THE COURT: What did you do for Kama'aina?
01:05PM 7 THE DEFENDANT: I was a salesman.
01:05PM 8 THE COURT: You understand, speak, and I assume write
01:05PM 9 English all just fine; is that fair?
01:05PM 10 THE DEFENDANT: Yes.
01:05PM 11 THE COURT: Have you taken any type of drugs, legal or
01:05PM 12 illegal, within the past 48 hours?
01:05PM 13 THE DEFENDANT: No, sir.
01:05PM 14 THE COURT: Have you consumed any alcohol within the
01:05PM 15 past 24 hours?
01:05PM 16 THE DEFENDANT: No, sir.
01:05PM 17 THE COURT: Is it fair to say then that you are sober
01:05PM 18 and thinking clearly this afternoon?
01:05PM 19 THE DEFENDANT: Yes.
01:05PM 20 THE COURT: What is your understanding of the purpose
01:05PM 21 of this afternoon's hearing?
01:05PM 22 THE DEFENDANT: To plead guilty.
01:05PM 23 THE COURT: And have you had enough time, sir, to
01:05PM 24 discuss that decision whether or not to plead guilty as well as
01:05PM 25 this case generally with Mr. Victor?

01:05PM 1 THE DEFENDANT: Yes.

01:06PM 2 THE COURT: And are you satisfied with his
01:06PM 3 representation of you thus far in this case?

01:06PM 4 THE DEFENDANT: Yes, sir.

01:06PM 5 THE COURT: Mr. Victor, do you have any reason to
01:06PM 6 doubt your client's capacity or competence to enter a knowing
01:06PM 7 and informed plea this afternoon?

01:06PM 8 MR. VICTOR: I don't, Judge.

01:06PM 9 THE COURT: Counts 1 and 13 are two of the many counts
01:06PM 10 set forth in the second superseding indictment; I'm going to
01:06PM 11 summarize those two counts for you.

01:06PM 12 First of all, Count 1 charges you and others with
01:06PM 13 conspiring to violate the racketeering laws of the United
01:06PM 14 States in violation of Section 1962(c) of Title 18, that's of
01:06PM 15 the United States Code.

01:06PM 16 Count 13 charges you with using and releasing a
01:06PM 17 chemical called chloropicrin for other than lawful or peaceful
01:06PM 18 purposes in a Honolulu nightclub on March 4, 2017. If true,
01:06PM 19 that would violate both Section 229 and 229(a) of Title 18 of
01:07PM 20 the United States Code. Have you discussed these charges and
01:07PM 21 allegations with counsel?

01:07PM 22 THE DEFENDANT: Yes.

01:07PM 23 THE COURT: And are you confident, based on your own
01:07PM 24 review and discussions with counsel, that you understand the
01:07PM 25 nature of the charges brought against you?

01:07PM 1 THE DEFENDANT: Yes, sir.

01:07PM 2 THE COURT: Do you have any questions at all regarding
01:07PM 3 these charges?

01:07PM 4 THE DEFENDANT: No, sir.

01:07PM 5 THE COURT: Has anyone, Mr. Freitas, threatened,
01:07PM 6 forced, or coerced you into pleading guilty this afternoon?

01:07PM 7 THE DEFENDANT: No, sir.

01:07PM 8 THE COURT: To your knowledge, has anyone threatened,
01:07PM 9 forced, or coerced anyone close to you, meaning a close friend
01:07PM 10 or relative, in order to get you to plead guilty?

01:07PM 11 THE DEFENDANT: No, sir.

01:07PM 12 THE COURT: Other than the promises that the
01:07PM 13 government has made in its written plea agreement with you,
01:07PM 14 which we will get into in just a minute in some detail, has
01:07PM 15 anyone else made any promises or assurances to you in order to
01:07PM 16 get you to plead guilty?

01:07PM 17 THE DEFENDANT: No, sir.

01:07PM 18 THE COURT: Are you pleading guilty this afternoon
01:07PM 19 because you are guilty of the conduct alleged in Counts 1 and
01:07PM 20 13?

01:07PM 21 THE DEFENDANT: Yes.

01:07PM 22 THE COURT: Mr. Inciong, would you then please
01:07PM 23 describe the potential penalties that Mr. Freitas faces for
01:07PM 24 pleading guilty to each of Counts 1 and 13?

01:08PM 25 MR. INCIONG: Yes, Your Honor. In regards to Count 1,

01:08PM 1 the maximum penalties are as follows:

01:08PM 2 First, there is a term of imprisonment of not more
01:08PM 3 than 20 years; a fine of up to \$250,000; there is a term of
01:08PM 4 supervised release that's required of up to three years as
01:08PM 5 well.

01:08PM 6 In regard to Count 13, there is a term of imprisonment
01:08PM 7 of any years; a fine of up to \$250,000; plus a term of
01:08PM 8 supervised release of up to five years.

01:08PM 9 For both counts, there is a mandatory \$100 special
01:08PM 10 assessment, and there is a general forfeiture provision that's
01:08PM 11 part of the plea agreement as alleged in the indictment. Your
01:08PM 12 Honor, at this time there are no specific forfeiture
01:08PM 13 allegations.

01:08PM 14 THE COURT: All right. And that's paragraph 7D, as in
01:08PM 15 David, of the plea agreement; is that correct?

01:08PM 16 MR. INCIONG: That's correct.

01:08PM 17 THE COURT: Mr. Victor, do you agree, sir, with the
01:08PM 18 potential penalties that your client faces for pleading guilty
01:08PM 19 to Counts 1 and 13 as just described by AUSA Inciong?

01:08PM 20 MR. VICTOR: I do, Judge.

01:08PM 21 THE COURT: Mr. Freitas, do you, sir, understand the
01:09PM 22 potential penalties that you face for pleading guilty to each
01:09PM 23 of these two counts?

01:09PM 24 THE DEFENDANT: Yes, correct.

01:09PM 25 THE COURT: You've entered into a written plea

01:09PM 1 agreement with the government; is that correct?

01:09PM 2 THE DEFENDANT: Yes.

01:09PM 3 THE COURT: Have you read that document, the plea
01:09PM 4 agreement, in full?

01:09PM 5 THE DEFENDANT: Yes.

01:09PM 6 THE COURT: And have you had a chance to discuss it
01:09PM 7 with counsel?

01:09PM 8 THE DEFENDANT: Yes.

01:09PM 9 THE COURT: And based on your own review and
01:09PM 10 discussions with counsel, are you confident that you understand
01:09PM 11 each of the terms of your plea agreement with the United
01:09PM 12 States?

01:09PM 13 THE DEFENDANT: Yes, sir.

01:09PM 14 THE COURT: Do you have questions regarding any of the
01:09PM 15 provisions of the agreement?

01:09PM 16 THE DEFENDANT: No questions.

01:09PM 17 THE COURT: Mr. Victor, are you satisfied that
01:09PM 18 Mr. Freitas understands the terms of his plea agreement with
01:09PM 19 the United States?

01:09PM 20 MR. VICTOR: I am, Judge.

01:09PM 21 THE COURT: I have what appears to be the original of
01:09PM 22 that agreement in front of me, it's a 24-paged document.

01:09PM 23 Mr. Freitas, do you recall signing the final page,
01:09PM 24 page 24 of the document, dated March 9th of 2022?

01:09PM 25 THE DEFENDANT: Yes.

01:09PM 1 THE COURT: Does the written plea agreement,
01:09PM 2 Mr. Freitas, reflect the entire agreement that you have with
01:09PM 3 the United States?

01:09PM 4 THE DEFENDANT: I'm sorry, can you say that again?

01:10PM 5 THE COURT: Sure. Does the written plea agreement
01:10PM 6 that you signed reflect the entire agreement that you have with
01:10PM 7 the United States?

01:10PM 8 MR. VICTOR: Could we have a moment, Judge?

01:10PM 9 THE COURT: Yes.

01:10PM 10 MR. VICTOR: Judge, two things. You could reask him
01:10PM 11 that question and I expect you'll get a satisfactory answer;
01:10PM 12 but secondarily, I think when the Court earlier asked him about
01:10PM 13 where he works most recently, I think he misunderstood the
01:10PM 14 nature of that question. He gave you his employment, his last
01:10PM 15 employment. He has different employment now, so I want to make
01:10PM 16 sure we have an opportunity to correct the record on that.

01:10PM 17 THE COURT: All right. So let's go back and take the
01:10PM 18 second issue first. When I asked you earlier who is your most
01:10PM 19 recent employer, you mentioned Kama'aina Termite and Pest
01:11PM 20 Control, is that not a correct answer?

01:11PM 21 THE DEFENDANT: No, it's going to be B&K Construction.

01:11PM 22 THE COURT: What do you do for B&K Construction?

01:11PM 23 THE DEFENDANT: A journeyman finisher.

01:11PM 24 THE COURT: Is that a job that you hold currently?

01:11PM 25 THE DEFENDANT: Yes, I've been carrying it since 2009.

01:11PM 1 It's a Local 1 union.

01:11PM 2 THE COURT: Thank you for correcting the record. The
01:11PM 3 current issue, the first one that Mr. Victor just brought up in
01:11PM 4 his comments, asked you whether or not the plea agreement with
01:11PM 5 the United States, the written copy of the plea agreement that
01:11PM 6 I have in front of me, does that reflect the entire agreement
01:11PM 7 that you have with the United States?

01:11PM 8 THE DEFENDANT: Yes.

01:11PM 9 THE COURT: Another way of asking the question maybe
01:11PM 10 would be, did the government make any verbal or oral promises
01:11PM 11 to you that they did not put into the written plea agreement?

01:11PM 12 THE DEFENDANT: Yes.

01:12PM 13 THE COURT: What's that?

01:12PM 14 THE DEFENDANT: No, I'm sorry.

01:12PM 15 THE COURT: Your answer is no?

01:12PM 16 THE DEFENDANT: No.

01:12PM 17 THE COURT: Do you understand, sir, that the Court is
01:12PM 18 not required to accept the plea agreement that you signed with
01:12PM 19 the United States, and it is possible for me to reject it? I
01:12PM 20 won't make that decision however until after a presentence
01:12PM 21 investigation and report have both been completed.

01:12PM 22 THE DEFENDANT: I understand.

01:12PM 23 THE COURT: Do you also understand that any
01:12PM 24 stipulations in the written plea agreement are agreements
01:12PM 25 between you and the Department of Justice and that the Court is

01:12PM 1 specifically not bound by those stipulations?

01:12PM 2 THE DEFENDANT: Yes, sir.

01:12PM 3 THE COURT: Mr. Inciong, would you then please
01:12PM 4 describe the essential terms of the government's plea agreement
01:12PM 5 with Mr. Freitas, including any appellate waiver provisions
01:12PM 6 please?

01:12PM 7 MR. INCIONG: Yes, Your Honor. Pursuant to the plea
01:12PM 8 agreement, the defendant, Mr. Freitas, will enter guilty pleas
01:12PM 9 voluntarily to Counts 1 and 13 of the second superseding
01:12PM 10 indictment, which charges him with conspiring to violate the
01:12PM 11 racketeering laws of the United States, which is the charge in
01:13PM 12 Count 1, and using a chemical weapon in violation of Title 18,
01:13PM 13 United States Code, Sections 229(a)(1) and 229(a)(2), which is
01:13PM 14 Count 13. In return, the government agrees to dismiss Counts 12
01:13PM 15 and 16 of the second superseding indictment as to the defendant
01:13PM 16 after sentencing.

01:13PM 17 The defendant agrees that this memorandum of plea
01:13PM 18 agreement will be filed and become part of the record in this
01:13PM 19 case. The defendant is entering these pleas because he is in
01:13PM 20 fact guilty of conspiring to violate the racketeering laws of
01:13PM 21 the United States, namely Title 18, United States Code, Section
01:13PM 22 1962(d), and using a chemical weapon in violation of Title 18,
01:13PM 23 United States Code, Sections 229(a)(1) and 229(a)(2), as
01:13PM 24 charged in Counts 1 and 13 of the second superseding
01:13PM 25 indictment. Mr. Freitas further agrees that these pleas are

01:13PM 1 voluntary and not the result of any force or threat.

01:13PM 2 The defendant understands the penalties which apply to
01:14PM 3 each of these counts as was recited earlier. There are a
01:14PM 4 number of factual stipulations that the parties have entered
01:14PM 5 into, Your Honor; those begin on page 5 on paragraph 8 of the
01:14PM 6 plea agreement continuing through page 11.

01:14PM 7 Pursuant to Rule 32.1(a) of the local rules of the
01:14PM 8 United States District Court for the District of Hawaii, the
01:14PM 9 parties agree that the charges to which the defendant is
01:14PM 10 pleading guilty adequately reflect the seriousness of the
01:14PM 11 actual offense behavior and that accepting this plea agreement
01:14PM 12 would not undermine any statutory purposes of sentencing.

01:14PM 13 There are a number of sentencing stipulations that the
01:14PM 14 parties have entered into. First, as of the date of this
01:14PM 15 agreement, it is expected that the defendant will enter a plea
01:14PM 16 of guilty -- actually, pleas of guilty prior to the
01:14PM 17 commencement of trial, that he will truthfully admit his
01:14PM 18 involvement in the offenses and related conduct and will not
01:14PM 19 engage in any conduct that is inconsistent with such acceptance
01:15PM 20 of responsibility. If all of these events occur, and the
01:15PM 21 defendant's acceptance of responsibility continues to the date
01:15PM 22 of sentencing, a downward adjustment of two levels for
01:15PM 23 acceptance of responsibility will be appropriate, pursuant to
01:15PM 24 Guideline Section 3E1.1, subparagraph A, and Application Note
01:15PM 25 3.

01:15PM 1 The parties also agree and stipulate that pursuant to
01:15PM 2 Guideline 2M, as in Mary, 6.1, subparagraph A, subparagraph 2,
01:15PM 3 the applicable base offense level in this case is 28. The
01:15PM 4 parties further stipulate that a plus two level increase
01:15PM 5 applies as prescribed in Guideline Section 2M6.1, subparagraph
01:15PM 6 B, subparagraph 1, subparagraph ii, because chloropicrin is a
01:15PM 7 listed toxic chemical. The parties also agree that an upward
01:15PM 8 adjustment pursuant to Guideline Section 2M6.1, subparagraph B,
01:16PM 9 subparagraph 3, subparagraph i, does not apply to the facts of
01:16PM 10 this case, as there was no, quote, substantial disruption of
01:16PM 11 business functions or services. However, pursuant to paragraph
01:16PM 12 7(e) of this plea agreement, the defendant agrees to pay
01:16PM 13 restitution for any financial losses demonstrated to have been
01:16PM 14 incurred by the "District" nightclub on March 4, 2017.

01:16PM 15 The U.S. Attorney agrees that the defendant's
01:16PM 16 agreement herein to enter into a guilty plea constitutes notice
01:16PM 17 of intent to plead guilty in a timely manner, so as to permit
01:16PM 18 the government to avoid preparing for trial as to the
01:16PM 19 defendant. Accordingly, the U.S. Attorney anticipates moving
01:16PM 20 in the government's sentencing statement for a one-level
01:16PM 21 reduction in sentencing offense level pursuant to Guideline
01:16PM 22 Section 3E1.1, subparagraph B, subparagraph 2, if the defendant
01:16PM 23 is otherwise eligible. The defendant understands however that
01:17PM 24 notwithstanding these present intentions, and still within the
01:17PM 25 parameters of this plea agreement, the prosecution reserves the

01:17PM 1 right to argue to the contrary in the event that new
01:17PM 2 information is received relating to those issues and/or to call
01:17PM 3 and examine witnesses on those issues in the event that either
01:17PM 4 U.S. Probation finds to the contrary of the prosecution's
01:17PM 5 intentions or that this Court requests evidence.

01:17PM 6 The parties also agree that notwithstanding the
01:17PM 7 parties' agreement herein, the Court is not bound by any
01:17PM 8 stipulation entered into by the parties. The Court will be,
01:17PM 9 with the aid of the presentence report, the final determiner of
01:17PM 10 any facts relevant to sentencing. The parties also understand
01:17PM 11 that the Court's rejection of any stipulation between the
01:17PM 12 parties does not constitute a refusal to accept this plea
01:17PM 13 agreement since the Court is expressly not bound by the
01:17PM 14 parties' stipulations.

01:17PM 15 Your Honor, the parties represent that as of today's
01:17PM 16 date there are no material facts in dispute.

01:18PM 17 In regard to appeal and collateral review, the
01:18PM 18 defendant is aware that typically he would have the right to
01:18PM 19 appeal his conviction and the sentence imposed. However,
01:18PM 20 pursuant to this plea agreement, the defendant is knowingly and
01:18PM 21 voluntarily waiving his right to appeal as well as his right to
01:18PM 22 collaterally attack his conviction and sentence except in two
01:18PM 23 limited circumstances.

01:18PM 24 First, if the Court imposes a sentence greater than
01:18PM 25 specified in the guideline range determined by the Court to be

01:18PM 1 applicable to the defendant, Mr. Freitas will retain the right
01:18PM 2 to appeal the portion of the sentence greater than specified in
01:18PM 3 the guideline range and the manner in which that portion was
01:18PM 4 determined, as well as to challenge that portion of his
01:18PM 5 sentence in a collateral attack. He also retains the right to
01:18PM 6 pursue any claim of ineffective assistance of counsel that he
01:18PM 7 believes may be present.

01:18PM 8 The defendant understands that irregardless the
01:18PM 9 prosecution will retain its right to appeal the sentence in the
01:19PM 10 manner it was determined on any grounds.

01:19PM 11 There is a financial disclosure requirement as part of
01:19PM 12 the plea agreement, Your Honor. In connection with the
01:19PM 13 collection of restitution or other financial obligations that
01:19PM 14 may be imposed upon him, the defendant agrees to fully disclose
01:19PM 15 all assets in which he has any interest over or which he
01:19PM 16 exercises control, indirectly or directly, including any assets
01:19PM 17 held by a spouse, nominee, or third party. The defendant
01:19PM 18 understands that the U.S. Probation Office will require him to
01:19PM 19 complete a comprehensive financial statement that will be part
01:19PM 20 of the presentence investigation. To avoid the requirement of
01:19PM 21 doing that twice basically, the defendant agrees to truthfully
01:19PM 22 complete a financial statement to the U.S. Attorney's Office
01:19PM 23 who will then provide that to the U.S. Probation Office. The
01:19PM 24 defendant agrees to provide written updates to both U.S.
01:19PM 25 Probation Office and U.S. Attorney's Office regarding any

01:20PM 1 material changes in circumstances which occur prior to
01:20PM 2 sentencing. The defendant's failure to timely and accurately
01:20PM 3 complete and sign the financial statements and any written
01:20PM 4 update may, in addition to any other penalty or remedy,
01:20PM 5 constitute failure to accept responsibility by the defendant
01:20PM 6 under the Guideline Section 3E1.1.

01:20PM 7 Accordingly, the defendant has expressly authorized
01:20PM 8 the U.S. Attorney's Office to obtain his credit report and
01:20PM 9 authorize the U.S. Attorney's Office to inspect and copy all
01:20PM 10 financial documents and information held by U.S. Probation.

01:20PM 11 Finally, prior to sentencing, the defendant agrees to
01:20PM 12 notify the Financial Litigation Unit of the U.S. Attorney's
01:20PM 13 Office before making any transfer of interest in property with
01:20PM 14 a value exceeding \$1,000, whether owned directly or indirectly,
01:20PM 15 individually or jointly, by the defendant and including any
01:20PM 16 interest held or owned under any name, including trusts,
01:20PM 17 partnerships, and corporations.

01:20PM 18 In regard to imposition of sentence, the defendant
01:21PM 19 understands that the District Court in imposing his sentence
01:21PM 20 will consider the provisions of the Sentencing Guidelines.
01:21PM 21 However, the defendant understands there is no promise or
01:21PM 22 guarantee as to the applicability or nonapplicability of those
01:21PM 23 guidelines, notwithstanding any representations or predictions
01:21PM 24 from any source.

01:21PM 25 The defendant also understands that this plea

01:21PM 1 agreement will not be accepted or rejected by the Court until
01:21PM 2 it has had an opportunity to review the presentence report. The
01:21PM 3 defendant also understands that the Court will not accept the
01:21PM 4 plea agreement, unless the Court determines that the remaining
01:21PM 5 charges adequately reflect the seriousness of the actual
01:21PM 6 offense behavior and that accepting the plea agreement would
01:21PM 7 not undermine any statutory purposes of sentencing.

01:21PM 8 Pursuant to the terms of this plea agreement, the
01:21PM 9 defendant is waiving a number of important trial rights, both
01:21PM 10 constitutional and otherwise, including the right to have a
01:21PM 11 jury of his peers determine the elements of the counts against
01:21PM 12 him beyond a reasonable doubt. Also included is the
01:22PM 13 defendant's right and privilege against self-incrimination so
01:22PM 14 that he can decline to testify and no inference of guilt could
01:22PM 15 be drawn from his refusal to testify. Conversely, the
01:22PM 16 defendant would obviously have the right to testify as well.

01:22PM 17 Also, the defendant would have the right to have the
01:22PM 18 jury determine beyond a reasonable doubt the quantity and
01:22PM 19 weight of the controlled substances charged in the second
01:22PM 20 superseding indictment necessary to establish any statutory
01:22PM 21 mandatory minimum or increase statutory maximum penalty. By
01:22PM 22 pleading guilty, Mr. Freitas understands he is waiving all of
01:22PM 23 these rights.

01:22PM 24 In regard to use of police statements, if after
01:22PM 25 signing this plea agreement the defendant decides not to plead

01:22PM 1 guilty as provided herein, or if he pleads guilty but
01:22PM 2 subsequently makes a motion before this Court to withdraw his
01:22PM 3 guilty plea and the Court would grant that motion, the
01:22PM 4 defendant agrees that any admission of guilt that he makes by
01:23PM 5 signing this agreement or that he makes while pleading guilty,
01:23PM 6 as set forth in this agreement, may be used against him in a
01:23PM 7 subsequent trial, if the defendant would later proceed to
01:23PM 8 trial. The defendant knowingly, voluntarily and intelligently
01:23PM 9 waives any protections afforded by Rule 11(f) of the Federal
01:23PM 10 Rules of Criminal Procedure and Rule 410 of the Federal Rules
01:23PM 11 of Evidence regarding the use of statements made in this
01:23PM 12 agreement or during the course of pleading guilty when and if
01:23PM 13 the guilty plea is later withdrawn.

01:23PM 14 The only exception to this paragraph, Your Honor, is
01:23PM 15 where the defendant fully complies with his agreement but the
01:23PM 16 Court nonetheless rejects the plea agreement, under those
01:23PM 17 circumstances the United States may not use the statements of
01:23PM 18 the defendant for any purpose.

01:23PM 19 Mr. Freitas also understands that the prosecution will
01:23PM 20 apprise the Court and the U.S. Probation Office of the nature,
01:23PM 21 scope, and extent of the defendant's conduct regarding the
01:23PM 22 charges against him, any related matters, as well as any
01:23PM 23 mitigating or aggravating factors that are relevant to
01:24PM 24 sentencing.

01:24PM 25 There is a cooperation provision as well, as part of

01:24PM 1 this agreement, Your Honor, in which the defendant has agreed
01:24PM 2 he will fully cooperate with the United States, including
01:24PM 3 agreeing to testify truthfully at any and all trials, hearings,
01:24PM 4 or other proceedings in which the prosecution requests him to
01:24PM 5 testify, including but not limited to any grand jury
01:24PM 6 proceedings, trial proceedings involving codefendants and
01:24PM 7 others charged later in the investigation. This also includes
01:24PM 8 sentencing and related civil proceeding.

01:24PM 9 This means the defendant has agreed he will be
01:24PM 10 available to speak with law enforcement officials and
01:24PM 11 representatives of the U.S. Attorney's Office at any time and
01:24PM 12 give truthful and complete answers at such meetings.

01:24PM 13 The defendant likewise agrees he will not assert any
01:24PM 14 privilege to refuse to testify at any grand jury, trial, or
01:24PM 15 other proceedings involving or related to the crimes charged in
01:24PM 16 the second superseding indictment or any subsequent charges
01:24PM 17 related to this investigation.

01:24PM 18 The defendant also agrees that his sentencing date may
01:25PM 19 be delayed based on the government's need for the defendant's
01:25PM 20 continued cooperation and agrees not to object to any
01:25PM 21 continuances.

01:25PM 22 Pursuant to Guideline Section 1B1.8, subparagraph A,
01:25PM 23 of the Sentencing Guidelines, the prosecution agrees that
01:25PM 24 self-incriminating information provided pursuant to this
01:25PM 25 agreement to cooperate will not be used in determining the

01:25PM 1 applicable guideline range, except as may be provided in this
01:25PM 2 agreement and under Section 1B1.8, subparagraph b of the
01:25PM 3 guidelines.

01:25PM 4 In the event the defendant does not breach any of the
01:25PM 5 terms of the agreement, but the Court nonetheless refuses to
01:25PM 6 accept the plea agreement after the defendant had made
01:25PM 7 statements to law enforcement authorities or representatives of
01:25PM 8 the U.S. Attorney's Office, the prosecution agrees not to use
01:25PM 9 said statements in its case in chief in the trial of the
01:25PM 10 defendant in this matter. The defendant understands however
01:25PM 11 that this does not bar the use of information and evidence
01:25PM 12 derived from such statements or prohibit the use of the
01:26PM 13 statements by the prosecution in cross-examination or rebuttal.

01:26PM 14 Based on his cooperation, Mr. Freitas understands that
01:26PM 15 pursuant to Guideline 5K1.1 and Rule 35(b) of the Federal Rules
01:26PM 16 of Criminal Procedure, the prosecution may move the Court to
01:26PM 17 depart from the guidelines on the ground that the defendant has
01:26PM 18 provided substantial assistance. And this would be in relation
01:26PM 19 to the investigation or prosecution of other persons who have
01:26PM 20 committed an offense.

01:26PM 21 The defendant understands however that the decision as
01:26PM 22 to whether to make such a request or motion lies entirely with
01:26PM 23 the prosecution and that this agreement does not require the
01:26PM 24 prosecution to make such a request or motion.

01:26PM 25 The defendant and his attorney acknowledge that, apart

01:26PM 1 from any written proffer agreements, if applicable, no threats,
01:26PM 2 promises, agreements or conditions have been entered into by
01:27PM 3 the parties, other than those set forth in this plea agreement,
01:27PM 4 to induce Mr. Freitas to plead guilty. Apart from any written
01:27PM 5 proffer agreements, if applicable, this agreement supersedes
01:27PM 6 all prior promises, agreements or conditions between the
01:27PM 7 parties.

01:27PM 8 To become effective, this plea agreement must be
01:27PM 9 signed by all signatories, and that is reflected on page 24 of
01:27PM 10 the plea agreement, Your Honor.

01:27PM 11 Finally, should the Court refuse to accept this plea
01:27PM 12 agreement, it will become null and void and neither party would
01:27PM 13 be bound thereto.

01:27PM 14 Those are the terms of the plea agreement.

01:27PM 15 THE COURT: Mr. Victor, do you agree the AUSA Inciong
01:27PM 16 has set forth and accurately done so the essential terms of
01:27PM 17 your client's plea agreement with the United States?

01:27PM 18 MR. VICTOR: Yes, Judge. I think that was the most
01:27PM 19 comprehensive summary of a plea agreement I've witnessed in my
01:27PM 20 entire career; so yes.

01:27PM 21 THE COURT: All right. Mr. Freitas, you would be
01:27PM 22 giving up by virtue of entering into this plea agreement with
01:27PM 23 the United States some important trial and trial related
01:27PM 24 rights. I know you are familiar with what those rights consist
01:28PM 25 of because they are largely set forth at paragraphs 17 and 18

01:28PM 1 of your particular agreement, the same agreement that you said
01:28PM 2 you have read and discussed with counsel. Nonetheless, I'm
01:28PM 3 going to go over those rights with you myself now, to be extra
01:28PM 4 sure you appreciate the nature of what you are giving up.

01:28PM 5 The first of which, sir, do you understand that under
01:28PM 6 the constitution and laws of the United States, you have the
01:28PM 7 right not to plead guilty and to proceed to a trial, including
01:28PM 8 a trial by jury, on the charges brought against you?

01:28PM 9 THE DEFENDANT: Yes.

01:28PM 10 THE COURT: Do you further understand that if you were
01:28PM 11 to proceed to trial, you would be presumed innocent, which
01:28PM 12 means that the government would have the burden of proving your
01:28PM 13 guilt to a jury beyond a reasonable doubt, and that at no time
01:28PM 14 would you have the burden of proving you are not guilty?

01:28PM 15 THE DEFENDANT: I understand.

01:28PM 16 THE COURT: Do you understand that in order to be
01:28PM 17 found guilty at any trial, a jury of 12 persons from this local
01:28PM 18 community would have to find your guilt not only beyond a
01:28PM 19 reasonable doubt, but they would have to do so unanimously?

01:28PM 20 THE DEFENDANT: Yes.

01:29PM 21 THE COURT: Do you understand that at all stages of
01:29PM 22 the prosecution, which includes trial, you have the right to
01:29PM 23 the assistance of counsel, as you do here this afternoon, and
01:29PM 24 if at any point in time you could not afford counsel, one would
01:29PM 25 be appointed for you by the Court at no cost to you?

01:29PM 1 THE DEFENDANT: I understand.

01:29PM 2 THE COURT: Do you understand that at any trial you
01:29PM 3 would have the right to see and to hear all of the government's
01:29PM 4 evidence and witnesses and to have those witnesses questioned
01:29PM 5 by your own attorney?

01:29PM 6 THE DEFENDANT: Yes.

01:29PM 7 THE COURT: Do you understand that at any trial you
01:29PM 8 could object to any of the evidence offered by the United
01:29PM 9 States and you could present evidence of your own in your case
01:29PM 10 in chief, including through witness testimony that is compelled
01:29PM 11 through the Court's subpoena power if that were necessary?

01:29PM 12 THE DEFENDANT: Yes.

01:29PM 13 THE COURT: Do you understand that at any trial you
01:29PM 14 would also have the right to testify on your own behalf, if you
01:29PM 15 chose to do that; but if you chose not to, no inference or
01:29PM 16 suggestion of your guilt could be drawn by the jury by the fact
01:29PM 17 that you chose not to testify?

01:29PM 18 THE DEFENDANT: I understand.

01:30PM 19 THE COURT: Do you understand, sir, that by entering a
01:30PM 20 plea of guilty here this afternoon, and if I were to accept
01:30PM 21 that plea, there will be no trial and you will have given up
01:30PM 22 each of these trial related rights that I've just mentioned?

01:30PM 23 THE DEFENDANT: I understand.

01:30PM 24 THE COURT: Do you also understand that in order to
01:30PM 25 proceed with your plea this afternoon you will also need to

01:30PM 1 give up your right not to incriminate yourself? And the reason
01:30PM 2 for that is, I'm about to ask you a few questions about what
01:30PM 3 you did that makes you guilty of Counts 1 and 13, and those
01:30PM 4 questions will need to be answered.

01:30PM 5 THE DEFENDANT: I understand.

01:30PM 6 THE COURT: Do you have any questions, sir, regarding
01:30PM 7 any of these rights that I've just mentioned?

01:30PM 8 THE DEFENDANT: No, sir.

01:30PM 9 THE COURT: And knowing these rights, Mr. Freitas, is
01:30PM 10 it still your desire to proceed with your plea?

01:30PM 11 THE DEFENDANT: Yes.

01:30PM 12 THE COURT: You are United States citizen, correct?

01:30PM 13 THE DEFENDANT: Correct.

01:30PM 14 THE COURT: As a United States citizen, you should
01:30PM 15 understand that the charges brought against you and that you
01:30PM 16 are prepared to plead guilty to are considered felony offenses.
01:30PM 17 If your plea is accepted and you are adjudged guilty of these
01:30PM 18 offenses, that adjudication by the Court could derive you of
01:30PM 19 some value civil rights. Those civil rights include the right
01:31PM 20 to vote, the right to hold public office, the right to sit on a
01:31PM 21 jury, as well as the right to possess or bear a firearm. Do
01:31PM 22 you understand that?

01:31PM 23 THE DEFENDANT: I understand.

01:31PM 24 THE COURT: With regard to sentencing, United States
01:31PM 25 law establishes detailed Sentencing Guidelines that apply to

01:31PM 1 those who are convicted of -- which include those who plead
01:31PM 2 guilty to federal crimes. The sentencing judge in this case,
01:31PM 3 is most likely going to be myself, the sentencing judge must
01:31PM 4 consider the Sentencing Guidelines. Additionally, the
01:31PM 5 sentencing judge must consider the statutory sentencing factors
01:31PM 6 that are set forth at Title 18 of the United States Code,
01:31PM 7 Section 3553(a), what we sometimes shorthand refer to as the
01:31PM 8 3553(a) factors. Although the sentencing judge must consider
01:31PM 9 the Sentencing Guidelines, those guidelines are what the name
01:31PM 10 might imply to you. They are guidelines which means that they
01:31PM 11 are advisory on this Court only. Do you understand that?

01:31PM 12 THE DEFENDANT: I understand.

01:31PM 13 THE COURT: Have you discussed with Mr. Victor how the
01:31PM 14 Sentencing Guidelines might apply to your case?

01:32PM 15 THE DEFENDANT: Yes.

01:32PM 16 THE COURT: Now, I'm sure he was just as careful as I
01:32PM 17 am, when I say "might," as I sit here today, I use the term
01:32PM 18 "might" because I cannot with precision tell you how the
01:32PM 19 Sentencing Guidelines apply to your case. I will not be able
01:32PM 20 to do that until after the presentence investigation and report
01:32PM 21 that I mentioned a few minutes ago have been completed and
01:32PM 22 after I have the benefit of any comments or objections to the
01:32PM 23 contents of that report that either counsel may wish to provide
01:32PM 24 to me. Do you understand that?

01:32PM 25 THE DEFENDANT: I understand.

01:32PM 1 THE COURT: That process takes about three to four
01:32PM 2 months in the normal course. At that point in time, I will be
01:32PM 3 able to tell you, with the benefit of that presentence
01:32PM 4 investigation and report, how the Sentencing Guidelines apply
01:32PM 5 to your case. At that time, I will also be able to apply the
01:32PM 6 Section 3553(a) factors that I mentioned a minute ago. When I
01:32PM 7 do those things, do you understand, sir, that I could impose a
01:32PM 8 sentence that is more or less than what the guidelines call
01:33PM 9 for?

01:33PM 10 THE DEFENDANT: Yes.

01:33PM 11 THE COURT: It is possible, since I just said I could
01:33PM 12 impose a sentence either more or less than what the guidelines
01:33PM 13 call for, one of those possibilities is that I impose a
01:33PM 14 sentence that is more than what the guidelines call for and
01:33PM 15 more than what you expect. If I do either of those things, do
01:33PM 16 you understand, sir, that you will still be bound by your plea
01:33PM 17 as well as your plea agreement and will have no right to
01:33PM 18 withdraw from either on that basis?

01:33PM 19 THE DEFENDANT: I understand.

01:33PM 20 THE COURT: Do you understand further that despite any
01:33PM 21 discussions you may have had with Mr. Victor, with Mr. Inciong,
01:33PM 22 or with anyone else regarding the type or the duration of the
01:33PM 23 sentence you are likely to receive or regarding any sentencing
01:33PM 24 recommendation that they may wish to provide to me, I am not
01:33PM 25 bound by those discussions nor am I bound by any

01:33PM 1 recommendations provided to me, and I could impose a sentence
01:33PM 2 that is more severe than what you expect up to the maximum
01:34PM 3 permitted by law?

01:34PM 4 THE DEFENDANT: I understand.

01:34PM 5 THE COURT: Has anyone made any promises at all to you
01:34PM 6 regarding what your sentence will be?

01:34PM 7 THE DEFENDANT: No, sir.

01:34PM 8 THE COURT: Do you understand that at the time of
01:34PM 9 sentencing there is no limitation on the information that I can
01:34PM 10 consider regarding your background, your character, and your
01:34PM 11 conduct except that the information I use must be sufficiently
01:34PM 12 reliable?

01:34PM 13 THE DEFENDANT: I understand.

01:34PM 14 THE COURT: Do you understand that if a term of
01:34PM 15 imprisonment is imposed as part of your sentence, a term of
01:34PM 16 what we call supervised release is very likely to follow, and
01:34PM 17 if you were to violate any of the conditions of supervised
01:34PM 18 release, additional prison time could be imposed?

01:34PM 19 THE DEFENDANT: I understand.

01:34PM 20 THE COURT: Do you also understand, sir, that in the
01:34PM 21 federal system parole has been abolished, and what that means
01:34PM 22 from a practical standpoint is if a term of imprisonment is
01:34PM 23 imposed as part of your sentence, you will not be released
01:34PM 24 early on parole?

01:34PM 25 THE DEFENDANT: I understand.

01:34PM 1 THE COURT: Do you understand, Mr. Freitas, that as
01:34PM 2 part of any final judgment, which includes a sentence in this
01:34PM 3 case, the Court could order you to pay a fine as well as a
01:35PM 4 special assessment?

01:35PM 5 THE DEFENDANT: Yes.

01:35PM 6 THE COURT: And the Court could order you to forfeit
01:35PM 7 property to the United States, including the property described
01:35PM 8 in paragraph 7D, as in David, of your plea agreement as well as
01:35PM 9 the property described in the various forfeiture notice
01:35PM 10 sections of the second superseding indictment.

01:35PM 11 THE DEFENDANT: Yes.

01:35PM 12 THE COURT: All right. So we have reached the point
01:35PM 13 in this afternoon's proceedings that I mentioned a few minutes
01:35PM 14 ago when we talked about the need to waive your right not to
01:35PM 15 incriminate yourself. I need to be sure that you in fact
01:35PM 16 committed the crimes that you have been charged with in Counts
01:35PM 17 1 and 13 of the second superseding indictment. The first step
01:35PM 18 in that process is to turn to the government's attorney,
01:35PM 19 Mr. Inciong, to set forth the essential elements of those two
01:35PM 20 counts.

01:35PM 21 MR. INCIONG: Yes, Your Honor. In regard to Count 1
01:35PM 22 which is the conspiring to violate the racketeering laws of the
01:35PM 23 United States, there are three elements:

01:35PM 24 First, that beginning in the late 1990s and ending on
01:35PM 25 or about June of 2020, there was an agreement between

01:36PM 1 Mr. Freitas and at least one other person to commit at least
01:36PM 2 one crime as charged in the second superseding indictment, in
01:36PM 3 this case to violate the racketeering laws of the United
01:36PM 4 States.

01:36PM 5 Secondly, the defendant became a member of that
01:36PM 6 conspiracy knowing of at least one of its objects and intending
01:36PM 7 to help accomplish it.

01:36PM 8 Thirdly, that one of the members of the conspiracy
01:36PM 9 performed at least one overt act for the purpose of carrying
01:36PM 10 out the conspiracy.

01:36PM 11 Your Honor, in regard to the second element, the
01:36PM 12 object of the conspiracy, there are a number of what I will
01:36PM 13 refer to as sub-elements that the United States also believes
01:36PM 14 it would be required to prove beyond a reasonable doubt. Those
01:36PM 15 go to the participation in the affairs of an association in
01:36PM 16 fact, pursuant to Title 18, U.S. Code 1962, subsection C.
01:36PM 17 Those sub-elements are:

01:36PM 18 First, there was an ongoing enterprise with some sort
01:36PM 19 of formal or informal framework for carrying out its
01:37PM 20 objectives, consisting of a group of persons associated
01:37PM 21 together for a common purpose or engaging in a course of
01:37PM 22 conduct.

01:37PM 23 Secondly, the defendant was employed by or associated
01:37PM 24 with that enterprise.

01:37PM 25 Third, that the defendant participated either directly

01:37PM 1 or indirectly in the conduct of the affairs of the enterprise
01:37PM 2 through a pattern of racketeering activity or collection of
01:37PM 3 unlawful debt.

01:37PM 4 And, fourth, that the enterprise engaged in or its
01:37PM 5 activities in some way affected commerce, either between one
01:37PM 6 state and another or between the United States and a foreign
01:37PM 7 country.

01:37PM 8 Those are the elements for Count 1.

01:37PM 9 In regard to Count 13, the use of a chemical weapon,
01:37PM 10 in this case chloropicrin, there are two elements:

01:37PM 11 First, that the defendant knowingly possessed or used
01:37PM 12 that substance; and secondly, it was a chemical weapon. Again,
01:38PM 13 there are what I will refer to as two sub-elements that the
01:38PM 14 United States believes it will also be required to prove beyond
01:38PM 15 a reasonable doubt if this matter went to trial.

01:38PM 16 These are pursuant to the U.S. Supreme Court opinion
01:38PM 17 in U.S. versus Bond, 134 Supreme Court 2077. And those
01:38PM 18 sub-elements are: First, that the substance was an extremely
01:38PM 19 dangerous substance or toxic chemical; and secondly, that that
01:38PM 20 substance had the potential to cause severe harm to people.

01:38PM 21 Those are the elements at issue, Your Honor.

01:38PM 22 THE COURT: All right. Mr. Victor, do you have any
01:38PM 23 disagreement with AUSA Inciong's description of the elements of
01:38PM 24 either Count 1 or Count 13?

01:38PM 25 MR. VICTOR: No, Judge.

01:38PM 1 THE COURT: I'll turn back to Mr. Inciong to set forth
01:38PM 2 the evidence that the government would offer in this case if it
01:38PM 3 were to proceed to trial.

01:38PM 4 MR. INCIONG: Yes, Your Honor. If this case proceeded
01:38PM 5 to trial, the United States would produce evidence and
01:38PM 6 testimony to show the following:

01:39PM 7 First, that from between November of 2014 and up to
01:39PM 8 including June of 2020, Kaulana Freitas, the defendant and
01:39PM 9 others, known and unknown, were members and associates of the
01:39PM 10 Miske Enterprise. Members and associates of the Miske
01:39PM 11 Enterprise operated principally under the direction and
01:39PM 12 protection of Michael J. Miske, Jr. who used his power over
01:39PM 13 members and associates of the Miske Enterprise, his reputation
01:39PM 14 for violence in the community and the various corporate
01:39PM 15 entities under his control to enrich the members and associates
01:39PM 16 of the Miske Enterprise and to protect their criminal
01:39PM 17 activities.

01:39PM 18 The evidence would show that the Miske Enterprise,
01:39PM 19 including its leadership, membership and associates constituted
01:39PM 20 an enterprise, as that term is defined in Title 18, U.S. Code,
01:39PM 21 Section 1961, subparagraph 4; that is, a group of individuals
01:39PM 22 and entities associated in fact.

01:39PM 23 The evidence would show the Miske Enterprise was
01:40PM 24 engaged in and its activities affected interstate and foreign
01:40PM 25 commerce. Some of those examples, Your Honor, which I will

01:40PM 1 talk about momentarily are the use of chemicals which were
01:40PM 2 transported from out of state into the District of Hawaii to be
01:40PM 3 used in furtherance of the conspiracy; same situation with
01:40PM 4 illegal drugs, such as cocaine, methamphetamine; also firearms
01:40PM 5 which were manufactured outside the State of Hawaii,
01:40PM 6 transported to Hawaii for use in either assaults, robberies, or
01:40PM 7 other crimes.

01:40PM 8 The evidence would show that the Miske Enterprise
01:40PM 9 operated within the District of Hawaii and elsewhere and
01:40PM 10 constituted an ongoing organization whose members and
01:40PM 11 associates functioned as a continuing unit for a common purpose
01:40PM 12 of achieving the objectives of the Miske Enterprise.

01:40PM 13 The evidence would show that beginning at least in or
01:40PM 14 about 2014, Mr. Freitas and others, known and unknown, being
01:40PM 15 persons employed by and associated with the Miske Enterprise
01:41PM 16 willfully and knowingly combined, conspired, confederated and
01:41PM 17 agreed together and with each other to violate the racketeering
01:41PM 18 laws of the United States, namely, Title 18, U.S. Code, Section
01:41PM 19 1962, subparagraph D. That is, to conduct and participate
01:41PM 20 directly and indirectly in the conduct of the affairs of the
01:41PM 21 Miske Enterprise through a pattern of racketeering activity as
01:41PM 22 that term is defined in Title 18, U.S. Code, Sections 1961,
01:41PM 23 subparagraphs 1 and 5.

01:41PM 24 The racketeering activity to which Mr. Freitas and
01:41PM 25 others agreed included offenses involving chemical weapons as

01:41PM 1 alleged in Counts 12 and 13 of the second superseding
01:41PM 2 indictment, offenses involving the felonious trafficking of
01:41PM 3 controlled substances as alleged in Count 16 of the second
01:41PM 4 superseding indictment, and acts involving robbery. The
01:41PM 5 evidence would also show that Mr. Freitas engaged in other
01:41PM 6 criminal conduct associated with the Miske Enterprise including
01:42PM 7 assaults.

01:42PM 8 In regard to acts relating to chemical weapons, the
01:42PM 9 evidence would show that on or about March 4, 2017,
01:42PM 10 Mr. Freitas, along with Michael J. Miske, Jr., John B. Stancil,
01:42PM 11 Jacob Smith and other members and associates of the enterprise
01:42PM 12 participated in a chemical weapon attack against the District
01:42PM 13 nightclub in Honolulu using the chemical chloropicrin. This
01:42PM 14 attack was carried out on the orders of Michael J. Miske, Jr.

01:42PM 15 The evidence would show that in advance of the attack,
01:42PM 16 Jacob Smith obtained the chloropicrin from John Stancil. Then
01:42PM 17 in the early morning hours of March 4, 2017, Mr. Smith drove
01:42PM 18 Mr. Freitas to the District night club where Mr. Freitas
01:42PM 19 entered the club and released the chloropicrin. The release of
01:42PM 20 the chloropicrin resulted in patrons of the nightclub
01:43PM 21 scrambling for the exit as they experienced burning in their
01:43PM 22 eyes and difficulty breathing. The club was forced to evacuate
01:43PM 23 and close early resulting in a nonsubstantial financial loss.

01:43PM 24 The evidence would show that chloropicrin qualifies as
01:43PM 25 a toxic chemical within the meaning of Title 18, U.S. Code,

01:43PM 1 Section 229(f), subparagraph 8, subparagraph A, and that
01:43PM 2 Mr. Freitas' use of chloropicrin in the chemical weapon attack
01:43PM 3 on the District nightclub on or about March 4, 2017 was
01:43PM 4 intended for a purpose -- was in fact used for a purpose
01:43PM 5 prohibited by Title 18, U.S. Code, Section 229. At the time
01:43PM 6 Mr. Freitas assisted with the chemical weapon attack, he
01:43PM 7 understood that his conduct was wrongful and unlawful.

01:43PM 8 Mr. Freitas also knew he was using a toxic chemical to
01:43PM 9 carry out the attack. While Mr. Freitas did not have specific
01:43PM 10 knowledge at the time that the chemical he released was
01:44PM 11 chloropicrin, he does not dispute that at a trial the
01:44PM 12 government would produce evidence to show the chemical
01:44PM 13 Mr. Freitas disbursed was in fact chloropicrin.

01:44PM 14 The United States would make that proof, Your Honor,
01:44PM 15 by a number of things, including expert testimony on the nature
01:44PM 16 of that chemical and testing of an actual chemical that was
01:44PM 17 recovered from a vehicle in which Mr. Freitas was the driver
01:44PM 18 sometime after the attack in which a bottle was found in a
01:44PM 19 backpack -- a liquor bottle that actually contained
01:44PM 20 chloropicrin.

01:44PM 21 In regard to offenses involving the felonious
01:44PM 22 trafficking of controlled substances, the evidence would show
01:44PM 23 that no later than 2017 and continuing to at least about
01:44PM 24 August 2018, Mr. Freitas conspired with others to distribute
01:44PM 25 and possess with intent to distribute Oxycodone, a Schedule II

01:44PM 1 controlled substance. Over the course of the conspiracy among
01:44PM 2 the individuals with whom Mr. Freitas worked to distribute
01:45PM 3 Oxycodone were Jacob Smith and Nicholas Carignan. Text
01:45PM 4 messages found on Jacob Smith's cellphone showed that Smith and
01:45PM 5 Freitas, who was using the account name of, quote, Shortly
01:45PM 6 Bull, discussed yellows, which was a code word for Oxycodone
01:45PM 7 pills. In the messages Mr. Freitas stated he would attempt to
01:45PM 8 obtain the yellows and later confirmed that he was in fact in
01:45PM 9 possession of Oxycodone. Smith responded that he and Carignan
01:45PM 10 would take 40 of them and Smith later acknowledged that he
01:45PM 11 purchased Oxycodone pills for \$20 each from Mr. Freitas.

01:45PM 12 Although Miske was not directly involved in Freitas'
01:45PM 13 trafficking activity, Mr. Freitas benefitted from the
01:45PM 14 protection he derived from being associated with Miske and the
01:45PM 15 Miske Enterprise in his drug trafficking activity.

01:45PM 16 In regard to acts involving robbery, the evidence
01:45PM 17 would show that at various times, no later than 2015 and
01:45PM 18 continuing until at least 2018, Mr. Freitas and other members
01:46PM 19 of the Miske Enterprise engaged in robberies and attempted
01:46PM 20 robberies. For example, on May 14, 2016, Mr. Freitas, along
01:46PM 21 with John B. Stancil and several other individuals,
01:46PM 22 participated in a setup and robbery of an individual they
01:46PM 23 believed to be a local drug dealer in possession of a large
01:46PM 24 amount of cash. After the individual was lured to the Hawaii
01:46PM 25 Kai boat ramp at Maunlua Bay in Honolulu, Mr. Freitas and other

01:46PM 1 enterprise members began to assault him, including kicking him
01:46PM 2 and pistol whipping him in the head. The enterprise members
01:46PM 3 demanded the individual's car keys and removed his pants which
01:46PM 4 held the keys to his car along with approximately \$7,000 in
01:46PM 5 cash.

01:46PM 6 One assailant pulled a chain off the victim's neck
01:46PM 7 before fleeing the scene in the victim's vehicle. The
01:46PM 8 individual who sustained minor cuts to his forehead, elbows,
01:46PM 9 and knees, as a result of the assault, reported that his iPhone
01:46PM 10 was also taken in addition to his car and cash. Although Miske
01:47PM 11 did not direct this assault and robbery and in fact later
01:47PM 12 chastised the assailants for committing the assault at the
01:47PM 13 Hawaii Kai boat ramp at Maunalua Bay, an area Mr. Miske
01:47PM 14 associated with his deceased son, Mr. Freitas and the others
01:47PM 15 involved in the assault were emboldened again by their
01:47PM 16 association with Miske and the Miske Enterprise and relied on
01:47PM 17 the protection they could count on as enterprise members.

01:47PM 18 The evidence will show there was other criminal
01:47PM 19 conduct that was committed at Mr. Miske's direction,
01:47PM 20 specifically Mr. Freitas and other members of the Miske
01:47PM 21 Enterprise assaulted and attempted to assault others who
01:47PM 22 angered Mr. Miske. For example, on November 13th of 2014,
01:47PM 23 Mr. Freitas again, with John B. Stancil, in using the threat of
01:47PM 24 force, attempted to retrieve a Rolex watch from Johnathan
01:47PM 25 Fraser at Kaneohe District Park. Fraser had stolen the watch

01:47PM 1 from Miske who had ordered a beating of Fraser early in the day
01:48PM 2 as retribution and then ordered Stancil and Freitas to retrieve
01:48PM 3 the watch from Fraser. After Fraser arrived at the park,
01:48PM 4 Mr. Freitas emerged from behind the tree and demanded the watch
01:48PM 5 from Fraser. Fraser got back into his vehicle and fled the
01:48PM 6 parking lot as he was chased by Stancil onto Kahikili Highway.
01:48PM 7 Fraser was ultimately able to escape and then met with Honolulu
01:48PM 8 police officers to whom he reported the incident.

01:48PM 9 That is the summary of the evidence that would be
01:48PM 10 produced to prove not only the racketeering count in Count 1
01:48PM 11 but the chemical weapon offense in Count 13.

01:48PM 12 THE COURT: Mr. Freitas, do you understand the
01:48PM 13 evidence that the government would offer in this case if it
01:48PM 14 were to proceed to trial?

01:48PM 15 THE DEFENDANT: Yes.

01:48PM 16 THE COURT: And do you agree, sir, that what the
01:48PM 17 government said you did is true?

01:48PM 18 THE DEFENDANT: Yes.

01:48PM 19 THE COURT: In your own words, Mr. Freitas, please
01:48PM 20 describe what you did that makes you guilty of Counts 1 and 13?

01:48PM 21 THE DEFENDANT: So on Count 13 I am guilty for putting
01:49PM 22 the chemical weapon inside District nightclub, inside the trash
01:49PM 23 can. I take full responsibility, and I'm sorry for everything.
01:49PM 24 Count 1, I know it's the racketeering assaults. I'm sorry, and
01:49PM 25 I take full responsibility. Yes, I was involved in a factual

01:49PM 1 basis that Mr. Inciong said.

01:49PM 2 THE COURT: Okay. With regard to Count 13, since
01:49PM 3 that's what you started with, the release of chloropicrin in
01:49PM 4 the District nightclub, that occurred on or about March 4,
01:49PM 5 2017; is that true?

01:49PM 6 THE DEFENDANT: Yes.

01:49PM 7 THE COURT: And you obtained chloropicrin from where?

01:49PM 8 THE DEFENDANT: From Jake Smith.

01:49PM 9 THE COURT: That's the Jacob Smith that Mr. Inciong
01:50PM 10 was referring to?

01:50PM 11 THE DEFENDANT: Jacob Smith.

01:50PM 12 THE COURT: He also went by Jake?

01:50PM 13 THE DEFENDANT: Yes.

01:50PM 14 THE COURT: And the release of chloropicrin in this
01:50PM 15 nightclub was accomplished at the direction of Mr. Michael
01:50PM 16 Miske, Jr.?

01:50PM 17 THE DEFENDANT: Yes, Your Honor.

01:50PM 18 THE COURT: And the objective was to disrupt the
01:50PM 19 business operations of that particular nightclub?

01:50PM 20 THE DEFENDANT: That is correct.

01:50PM 21 THE COURT: And that's because Mr. Miske owned his own
01:50PM 22 nightclub at the same time which was a competitor?

01:50PM 23 THE DEFENDANT: I believe so. He did own that
01:50PM 24 nightclub before.

01:50PM 25 THE COURT: District nightclub was in competition with

01:50PM 1 Mr. Miske's nightclub?

01:50PM 2 THE DEFENDANT: Yes.

01:50PM 3 THE COURT: Which was known as the M nightclub, I
01:50PM 4 believe?

01:50PM 5 THE DEFENDANT: Yes.

01:50PM 6 THE COURT: And at that time you knew that the
01:50PM 7 chloropicrin would have some kind toxic effect on the patrons
01:50PM 8 of that nightclub?

01:50PM 9 THE DEFENDANT: At that time, I did not know that was
01:50PM 10 chloropicrin. I thought it was some kind of Mace.

01:50PM 11 THE COURT: Even though you did not know the name of
01:51PM 12 the chemical that you were disbursing, you knew that it would
01:51PM 13 have some kind of effect on the patrons, correct?

01:51PM 14 THE DEFENDANT: Correct.

01:51PM 15 THE COURT: And it did; is that fair?

01:51PM 16 THE DEFENDANT: Yes.

01:51PM 17 THE COURT: The nightclub patrons, after you released
01:51PM 18 the chloropicrin, ended up leaving the nightclub because of the
01:51PM 19 effects that it had on them?

01:51PM 20 THE DEFENDANT: Yes, sir.

01:51PM 21 THE COURT: Now, with regard to Count 1, is it true
01:51PM 22 then that in the time frame that the government has mentioned,
01:51PM 23 which I believe is 2014 extending until 2020, I believe that
01:51PM 24 you had an agreement with others to include Mr. Stancil,
01:51PM 25 Mr. Smith, and Mr. Miske, all individuals that are charged in

01:51PM 1 either this case or their own separate case, to violate the
01:51PM 2 racketeering laws of the United States in a number of ways; is
01:51PM 3 that correct?

01:51PM 4 THE DEFENDANT: That is correct.

01:51PM 5 THE COURT: And one of those ways which benefitted the
01:52PM 6 organization that the government has referred to as the Miske
01:52PM 7 Enterprise were through the assaults that you mentioned a
01:52PM 8 minute ago?

01:52PM 9 THE DEFENDANT: Yes.

01:52PM 10 THE COURT: Can you give me an example of one such
01:52PM 11 instance?

01:52PM 12 THE DEFENDANT: With the assault?

01:52PM 13 THE COURT: Yes, sir.

01:52PM 14 THE DEFENDANT: At the Maunalua Bay incident, we
01:52PM 15 went -- I followed Michael Char (phonetic) to the bay, Maunalua
01:52PM 16 Bay, and we was hanging out over there. And then another group
01:52PM 17 of individuals came by and gun pointed him, made him go to the
01:52PM 18 ground, I was on the ground and John Stancil walked away. And
01:52PM 19 they started assaulting him, kicking him, pistol whipping him,
01:52PM 20 took off his pants, took his chain and fled in his car.

01:53PM 21 THE COURT: And this instance at Maunalua Bay, which
01:53PM 22 is on the east side of Honolulu, correct?

01:53PM 23 THE DEFENDANT: Yes, Hawaii Kai.

01:53PM 24 THE COURT: This instance occurred in May 2016?

01:53PM 25 THE DEFENDANT: Yes, I believe so.

01:53PM 1 THE COURT: And the objective was to rob this

01:53PM 2 individual who was a known local drug dealer to you?

01:53PM 3 THE DEFENDANT: That is correct.

01:53PM 4 THE COURT: And you wanted to take from him whatever

01:53PM 5 stash he may have had -- drug stash he may have had at that

01:53PM 6 time?

01:53PM 7 THE DEFENDANT: Yes.

01:53PM 8 THE COURT: Any cash that he had on his person; is

01:53PM 9 that fair?

01:53PM 10 THE DEFENDANT: Yes.

01:53PM 11 THE COURT: And his vehicle?

01:53PM 12 THE DEFENDANT: Yes, sir.

01:53PM 13 THE COURT: And all of those things were in fact taken

01:53PM 14 from him by you and others?

01:53PM 15 THE DEFENDANT: Yes.

01:53PM 16 THE COURT: And the others included Mr. Stancil?

01:53PM 17 THE DEFENDANT: Yes.

01:53PM 18 THE COURT: Is it also the case that you were engaged

01:53PM 19 in the 2017, 2018 time frame with the sale of controlled

01:53PM 20 substances?

01:53PM 21 THE DEFENDANT: Yes, sir.

01:53PM 22 THE COURT: And one example of that is, as described

01:53PM 23 in the plea agreement, you sold Oxycodone; is that fair?

01:53PM 24 THE DEFENDANT: Yes.

01:54PM 25 THE COURT: And you did so to others including Jake

01:54PM 1 Smith and Nick Carignan?

01:54PM 2 THE DEFENDANT: Yes, to Jacob Smith.

01:54PM 3 THE COURT: Right. You sold it to Jacob Smith as well
01:54PM 4 as to Nicholas Carignan; is that fair?

01:54PM 5 THE DEFENDANT: Yes.

01:54PM 6 THE COURT: And this is not something that Mr. Miske
01:54PM 7 directed; is that also fair?

01:54PM 8 THE DEFENDANT: No, he did not direct anything, the
01:54PM 9 robbery or the drugs.

01:54PM 10 THE COURT: Is it also fair though that you and the
01:54PM 11 other members of the Miske Enterprise who were involved in
01:54PM 12 these specific incidences benefitted from the protection of
01:54PM 13 that enterprise?

01:54PM 14 THE DEFENDANT: Yes.

01:54PM 15 THE COURT: To make a finer point, the whole -- you
01:54PM 16 folks were emboldened to engage in these activities, the drug
01:55PM 17 dealing, the assaults of the local drug dealers, because you
01:55PM 18 were mindful that these folks were unlikely to retaliate
01:55PM 19 against any of the persons involved in these assaults and
01:55PM 20 dealings because you were associated with the Miske Enterprise;
01:55PM 21 is that fair?

01:55PM 22 THE DEFENDANT: Yes, sir.

01:55PM 23 THE COURT: Are both counsel satisfied that a factual
01:55PM 24 basis for Mr. Freitas' plea of guilty to Counts 1 and 13 have
01:55PM 25 been established?

01:55PM 1 MR. INCIONG: Yes, the government is satisfied.

01:55PM 2 MR. VICTOR: Yes, Judge.

01:55PM 3 THE COURT: Then I'll turn back to you, Mr. Freitas.

01:55PM 4 As to Count 1 of the second superseding indictment, how do you
01:55PM 5 plead: guilty or not guilty?

01:55PM 6 THE DEFENDANT: Guilty, Your Honor.

01:55PM 7 THE COURT: As to Count 13 of the second superseding
01:55PM 8 indictment, how do you plead: guilty or not guilty?

01:55PM 9 THE DEFENDANT: Guilty, Your Honor.

01:55PM 10 THE COURT: The Court finds that the defendant,
01:55PM 11 Mr. Freitas, understands the nature of this afternoon's
01:55PM 12 proceedings and he is competent to enter a knowing and informed
01:55PM 13 plea.

01:55PM 14 The Court further finds that Mr. Freitas has in fact
01:56PM 15 entered a knowing, informed, and voluntary plea of guilty to
01:56PM 16 Counts 1 and 13 of the second superseding indictment.
01:56PM 17 Mr. Freitas has done so without coercion, force or threat.

01:56PM 18 Mr. Freitas' plea of guilty is supported by an
01:56PM 19 independent basis in fact containing each of the essential
01:56PM 20 elements of Counts 1 and 13 and that Mr. Freitas understands
01:56PM 21 the trial, as well as the civil rights that he would have in
01:56PM 22 the absence of pleading guilty, but nonetheless knowingly and
01:56PM 23 voluntarily elects to waive those rights. The Court finds that
01:56PM 24 in pleading guilty Mr. Freitas understands the factors that the
01:56PM 25 Court will consider at the time of sentencing, which includes

01:56PM 1 the potential penalties applicable to a violation of Counts 1
01:56PM 2 and 13 and that the defendant has forfeited and is agreeable to
01:56PM 3 forfeiting all right, title, interest, and claim to the
01:56PM 4 property described in paragraph 7 of the plea agreement.

01:56PM 5 Mr. Freitas, as you have acknowledged, sir, that you
01:56PM 6 are in fact guilty, I accept your guilty plea and I adjudge you
01:57PM 7 guilty as charged of Counts 1 and 13. The Court orders the
01:57PM 8 plea agreement in this case to be filed, but I reserve
01:57PM 9 determination of whether to accept it until after a presentence
01:57PM 10 investigation and report have both been prepared.

01:57PM 11 Ms. Kimura, may we get a sentencing date please?

01:57PM 12 THE CLERK: July 27, 2022 at nine a.m.

01:57PM 13 THE COURT: Is that date and time acceptable with both
01:57PM 14 counsel?

01:57PM 15 MR. INCIONG: Yes, Your Honor.

01:57PM 16 MR. VICTOR: Could I have a moment, Judge?

01:57PM 17 THE COURT: Yes. This is an initial date. I realize
01:57PM 18 that the date may need to get moved. In fact, it probably is
01:57PM 19 likely at this point that it will need to get moved, but this
01:57PM 20 is an initial setting.

01:57PM 21 MR. VICTOR: We were just discussing whether it made
01:57PM 22 more sense to set it off as far as December, because I think
01:57PM 23 there is little to no chance we are going to get it done before
01:57PM 24 then, rather than just continue I suspect.

01:57PM 25 THE COURT: Any issue with that, Mr. Inciong?

01:58PM 1 MR. INCIONG: No objection.

01:58PM 2 THE COURT: Why don't we move it into the first part
01:58PM 3 of the following year is probably more realistic.

01:58PM 4 Ms. Kimura, can we get a date in the early part of
01:58PM 5 2023?

01:58PM 6 THE CLERK: How about January 11th at 9:00?

01:58PM 7 THE COURT: Okay, January 11, 2023 at nine a.m. Is
01:58PM 8 that date acceptable?

01:58PM 9 MR. INCIONG: Yes, Your Honor.

01:58PM 10 MR. VICTOR: Turns out I'm free, Judge. Yes.

01:58PM 11 THE COURT: It's almost a year away. Again, if we
01:58PM 12 need to, we can move it off that date as well, but that's
01:58PM 13 probably as good a date as any time. Mr. Freitas has been out
01:58PM 14 on pretrial release by order of this Court as of January 5th of
01:58PM 15 this year. The pretrial services report that I've read
01:58PM 16 recently reports no issues whatsoever.

01:58PM 17 Any issue with allowing him to remain out on bail
01:58PM 18 subject to the same conditions as he has been from the
01:58PM 19 government's perspective?

01:58PM 20 MR. INCIONG: No objection, Your Honor.

01:58PM 21 THE COURT: All right. We will leave pretrial release
01:59PM 22 undisturbed for the time being.

01:59PM 23 Mr. Freitas, I will caution you as I do, it's not
01:59PM 24 anything you've gone, but I do this with every defendant who
01:59PM 25 remains out on release pending sentencing, that you are still

01:59PM 1 subject to all of the pretrial release conditions that you have
01:59PM 2 been operating just fine with, since you were released, and
01:59PM 3 have had no issues, like I said, at all that I can glean from
01:59PM 4 the pretrial services' most recent report. However, any single
01:59PM 5 violation of your pretrial release conditions could have
01:59PM 6 negative and serious consequences; those consequences include
01:59PM 7 your immediate detention. Do you understand that?

01:59PM 8 THE DEFENDANT: Yes, sir.

01:59PM 9 THE COURT: So as I said before, I think when we last
01:59PM 10 had our hearing, if you have any issues at all with any of the
01:59PM 11 pretrial release conditions, please be proactive about any
01:59PM 12 issues that you identify, speak with your lawyer, Mr. Victor,
01:59PM 13 about it, speak with your supervising officer. The last thing
01:59PM 14 you want is for any transgression to come to my attention. I'm
02:00PM 15 sure that's the last thing Mr. Victor wants pending sentencing
02:00PM 16 as I'm sure he has told you; so be active about it. If you
02:00PM 17 have any issues -- it's not like pretrial release conditions
02:00PM 18 can't be changed. If there is some problem with them that you
02:00PM 19 foresee, let's have a discussion about it before it becomes a
02:00PM 20 violation. Okay?

02:00PM 21 THE DEFENDANT: I understand.

02:00PM 22 THE COURT: Any other issue that we can take up this
02:00PM 23 afternoon in this matter that needs the Court's attention?

02:00PM 24 MR. INCIONG: I don't believe so, Your Honor.

02:00PM 25 THE COURT: Mr. Victor.

02:00PM 1 MR. VICTOR: Judge, will the presentence investigation
02:00PM 2 and presentence report continue on the regular schedule?

02:00PM 3 THE COURT: It will, correct. Even though sentencing
02:00PM 4 is off for nine or ten months, I have no doubt that as time
02:00PM 5 permits with probation they will start the PSR drafting process
02:00PM 6 in earnest well before January of next year.

02:00PM 7 MR. VICTOR: Thank you, Judge. Nothing further.

02:00PM 8 THE COURT: All right. We will see you back here in
02:00PM 9 January or on some other date that we identify that's mutually
02:01PM 10 convenient.

02:01PM 11 (Proceedings were concluded at 2:01 p.m.)

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1 COURT REPORTER'S CERTIFICATE.

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, April 11, 2023.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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